

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 February 2010

Public Authority: HM Courts Service (an executive agency of the Ministry of Justice)
Address: Ministry of Justice
102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information concerning the frequency and cost of involvement of locum legal advisers in Magistrates' Courts. The public authority refused the request under section 12(1) of the Act as it estimated that the cost of compliance with the request would exceed the cost limit of £600. The Commissioner finds that the cost of compliance with the request would exceed the £600 limit and so section 12(1) of the Act was applied correctly. However, the Commissioner also finds that the public authority failed to comply with its duty under section 16(1) of the Act to provide advice and assistance in that it did not provide advice to the complainant as to how to refine his request to bring it within the cost limit. The public authority is required to provide advice to the complainant on refining his request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 10 March 2008 the complainant made the following information requests:

"5. The number of Magistrates' Court day sessions covered by locum legal advisers in 2005-06 and 2006-07 in the following HMCS regions:

- i. Derbyshire*
- ii. Dyfed Powys*

- iii. Gloucestershire
- iv. Gwynedd
- v. Leicestershire
- vi. Nottinghamshire
- vii. Staffordshire
- viii. Warwickshire
- ix. West Mercia
- x. West Midlands and

- a. the total number of Magistrates' Court Family Court sessions in each of the above areas utilising locum legal advisers in that period; and
- b. the total number of Magistrates' Court criminal sessions in each of the above areas utilising locum legal advisers in that period.

6. The total cost per annum (excluding VAT) of locum legal advisers used for all sessions by Magistrates' Courts in 2005-06 and 2006-07 in the following areas:

- i. Derbyshire
- ii. Dyfed Powys
- iii. Gloucestershire
- iv. Gwynedd
- v. Leicestershire
- vi. Nottinghamshire
- vii. Staffordshire
- viii. Warwickshire
- ix. West Mercia
- x. West Midlands

7. The total cost per annum (excluding VAT) of locum legal advisers used for Family Court sessions by Magistrates' Courts in 2005-06 and 2006-07 in the following areas:

- i. Derbyshire
- ii. Dyfed Powys
- iii. Gloucestershire
- iv. Gwynedd
- v. Leicestershire
- vi. Nottinghamshire
- vii. Staffordshire
- viii. Warwickshire
- ix. West Mercia
- x. West Midlands

8. The total cost per annum (excluding VAT) of locum legal advisers used for criminal sessions by Magistrates' Courts in 2005-06 and 2006-07 in the following areas:

- i. Derbyshire
- ii. Dyfed Powys

- iii. *Gloucestershire*
- iv. *Gwynedd*
- v. *Leicestershire*
- vi. *Nottinghamshire*
- vii. *Staffordshire*
- viii. *Warwickshire*
- ix. *West Mercia*
- x. *West Midlands*"

3. The public authority responded to this on 9 April 2008. The requests were refused under section 12(1) as the public authority estimated that the cost of complying with the request would exceed the appropriate limit of £600. The public authority gave no estimate of the cost of complying with the request. Neither did it offer any advice to the complainant as to how the request could be refined to bring it within the cost limit.
4. The complainant responded on 17 April 2008 and requested that the public authority carry out an internal review. The public authority responded with the outcome of the review on 30 July 2008. The refusal under section 12(1) was upheld.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 3 July 2008. The complainant specified the refusal to disclose the information requested.
6. As suggested by the numbering in the request, the complainant originally made additional requests to those quoted above. In his correspondence to the public authority of 10 March 2008, the complainant specified that he only wished to pursue those requests quoted above. The complainant confirmed that his complaint to the Commissioner related only to the requests quoted above in his letter of 3 July 2008.
7. During the Commissioner's investigation the public authority disclosed to the complainant the information specified in request 6. As a result, this request is resolved and is not covered in this Notice.

Chronology

8. During a lengthy exchange of correspondence between the public authority and the Commissioner's office, the public authority initially altered its position and stated, whilst it maintained that compliance with request 5 would exceed the cost limit, its stance in relation to requests 7 and 8 was now that no information falling within the scope of these requests was held. At this stage the public authority provided to the Commissioner's office an estimate of the cost of compliance with

request 5 alone and an explanation of the searches it had carried out for information falling within the scope of requests 7 and 8.

9. After being asked for further explanation, including being asked to address the suggestions made by the complainant as to how the information requested could be located and collated, the public authority reverted to its earlier stance that the cost limit applied in relation to all of requests 5, 7 and 8. The public authority at this stage provided a new breakdown of its cost estimate. The analysis in this Notice concerns this cost estimate and the accompanying details as to how this was formed.

Analysis

Substantive Procedural Matters

Section 12

10. Section 12(1) provides that a public authority is not obliged to comply with an information request if the cost of doing so would exceed the appropriate limit. The limit for central government public authorities is set at £600 in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2005 (the "fees regulations"). The fees regulations also specify that the cost of compliance with a request must be calculated at the rate of £25 per hour, giving an effective time limit of 24 hours.
11. Section 12 can be applied in relation both to the cost of establishing whether the information is held, and to the cost of providing a copy of the information to the requester. The public authority in this case acknowledges that it holds the information requested, so is citing section 12(1) in relation to the cost of providing a copy of this information to the complainant.
12. The cost estimate made by the public authority relates to all of the complainant's requests. Section 12(4) provides that, in certain circumstances set out in the fees regulations, requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the fees regulations sets out the relevant condition and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
13. The Commissioner considers it clear from the wording of the complainant's requests that these relate to similar information. These requests can, therefore, be aggregated in accordance with Regulation 5 of the fees regulations.
14. The public authority has listed the tasks that it states it would be necessary to undertake in order to comply with the complainant's requests and has estimated

that it would take 244 hours to carry out these tasks. This gives a cost estimate of £6,115, well in excess of the appropriate limit. Section 12(1) requires that a public authority should make a reasonable *estimate* of the cost of compliance; it is not required to calculate exactly what that cost would be. This point was also made by the Information Tribunal in the case *Mr Alasdair Roberts v the Information Commissioner* (EA/2008/0050):

“Section 12 does not require the public authority to make a precise calculation of the costs of complying with a request. Only an estimate is required.” (paragraph 9)

The task for the Commissioner is to consider whether the cost estimate made by the public authority is reasonable.

15. The breakdown of the cost estimate is as follows. The public authority has stated that to establish how many and which court sessions involved locum lawyers would involve retrieving and reviewing invoices of payment to locum lawyers. Establishing whether these court sessions were criminal cases or family cases would then involve reviewing the record of each court session.
16. The public authority has listed the following tasks that it states it would be necessary to undertake in order to comply with the requests:
 - Enquiry of the invoice database and printing invoice: 2 minutes.
 - Creating a list of the individual court sessions that each invoice relates to: 1 minute.
 - Retrieving paper court records from archive: 5 minutes.
 - Locating the court date and the session in which a locum lawyer was involved: 2 minutes.
 - Identifying whether that court session was criminal or family: 1 minute.
 - Recording these details on a list: 1 minute.
17. This gives a time estimate of 12 minutes for each court session in which a locum lawyer was involved. The public authority has estimated that there were 1223 court sessions in which locum lawyers were involved during the time period and for the locations specified in the request.
18. The fees regulations specify those tasks that may be taken into account when forming a cost estimate. The Commissioner would note that he considers it debatable that some of the tasks specified above would fall within those tasks specified in the fees regulations. However, the Commissioner accepts that enough of the tasks specified by the public authority can be taken into account that the possibility that some of these tasks cannot be taken into account will not impact upon the conclusion here.
19. The Commissioner considers it reasonable to accept that it would have been necessary for the public authority to undertake the tasks described above in order to comply with the complainant's requests. The Commissioner also accepts as reasonable the estimate of the public authority that the appropriate limit would have been exceeded through undertaking tasks that are specified in the fees

regulations in complying with the request. The conclusion of the Commissioner is, therefore, that section 12(1) provided that the public authority was not required to comply with the complainant's requests.

Procedural Requirements

Section 16

20. The public authority failed, at either the refusal notice or internal review stage, to provide advice and assistance to the complainant as to how his request could be refined to bring the cost of compliance within the appropriate limit. In so doing, the public authority failed to comply with its duty under section 16(1) to provide advice and assistance.
21. In particular, the Commissioner believes that it may have been possible to comply with the first part of request 5 (but not requests 5(a) and (b)) without exceeding the appropriate limit. The public authority estimated in connection with the first part of request 5 that it would take an average of 4 minutes per invoice to review the contents of invoices recording payment to a locum lawyer. Having viewed a sample of these invoices, the Commissioner disagrees and considers that a reasonable estimate of the average time that would be taken to review these invoices would be 30 seconds per invoice. Given this, and in line with the duty to provide advice and assistance provided by section 16(1), the public authority should have advised the complainant that it may have been possible to comply with the first part of request 5 without exceeding the cost limit and offered the opportunity for the request to be narrowed to this part.

The Decision

22. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that its estimate as to the cost of compliance with the complainant's requests was reasonable and, therefore, section 12(1) did apply.
23. However, the Commissioner has also found that the public authority failed to comply with section 16(1) in failing to provide advice to the complainant as to how the request could be refined to bring it within the appropriate limit.

Steps Required

24. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - provide to the complainant advice as to how his requests could be refined to being them within the appropriate limit. In particular, the public authority should consider, taking into account paragraph 21 above, whether it would

be possible to comply with the first part of request 5 without exceeding the cost limit and, if so, advise the complainant of this and invite him to refine his request to include only this part.

25. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

26. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The section 45 code of practice (the “code”) contains recommendations for good practice, some of which are triggered by specific sections of the Act. So, for example, when refusing a request under section 12, paragraph 14 of the code states that authorities should:

“...consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee.”

28. The Commissioner notes that, in addition to failing to provide the complainant with advice and assistance in the manner recommended by the Code, the public authority also did not provide the complainant with any breakdown of the estimated costs of complying with the request in the refusal notice. Although the Act does not require a public authority to provide a costs breakdown when refusing a request under section 12, the Commissioner considers that it is good practice to do so. He would advise the public authority that conformity to the code and the inclusion of a costs breakdown in a section 12 refusal notice is likely to make it easier to comply with the section 16 duty to advise and assist an applicant on what could be provided within the cost limit.
29. The Commissioner’s published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority

Reference: FS50207333



Information Commissioner's Office

provide the outcome to the review within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

30. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

31. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 25th day of February 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 12

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 16

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”